

**Summary of SC95401, *Cooperative Home Care, Inc., et al. v. City of St. Louis, Missouri, et al.***  
Appeal from the St. Louis circuit court, Judge Steven R. Ohmer  
Argued and submitted October 6, 2016; opinion issued February 28, 2017

**Attorneys:** The city, its board of public services and its officers were represented by John J. Rehmann II, James G. Martin and Robert F. Epperson Jr. of Dowd Bennett LLP in St. Louis, (314) 889-7300; and Michael A. Garvin, Mark Lawson and Erin McGowan of the city counselor's office in St. Louis, (314) 622-3361. The group of employers and organizations was represented during arguments by Jane E. Dueker, Thomas W. Hayde and Arthur D. Gregg of Spencer Fane LLP in St. Louis, (314) 863-7733; and James N. Foster Jr. and Brian C. Hey of McMahon Berger in St. Louis, (314) 567-7350.

Several groups or individuals filed briefs as friends of the Court. Arthur J. Clemens Jr. of St. Louis represented himself. The Municipal and Labor Law Scholars, the National Employment Law Project and Missouri Jobs With Justice were represented by Christopher N. Grant of Schuchat, Cook & Werner in St. Louis, (314) 621-2626.

*This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** The parties cross-appeal the circuit court's judgment invalidating a city ordinance establishing a citywide local minimum wage. In an opinion written by Judge Laura Denvir Stith and joined by four other judges, the Supreme Court of Missouri affirms the circuit court's judgment that the city's minimum wage ordinance is not preempted by one state statute but reverses the circuit court's judgment holding the ordinance invalid under another. While the first statute purports to prohibit such local ordinances, that section is invalid because the bill enacting it contained more than one subject in violation of the state constitution. The other statute, however, considered alone or with a third statute, does not preempt the ordinance because it does not "occupy the field" of minimum wage laws, nor does it prohibit the adoption of local minimum wage ordinances. The city was within its charter authority in enacting a minimum wage ordinance.

Judge Zel M. Fischer concurs in result. The ordinance was enacted within the city's home-rule authority and is not preempted by HB 722 because it was in effect on August 28, 2015. This should end the inquiry – no further preemption analysis is necessary to resolve the case.

**Facts:** On August 28, 2015, St. Louis city enacted a local ordinance providing a series of four graduated increases to the minimum wage for employees working within the physical boundaries of St. Louis, each to take place at specified times. A group of employers and organizations (collectively, the employers) subsequently filed a seven-count petition seeking a declaratory judgment that the ordinance is invalid and asking for injunctive relief to prevent the city from enforcing the ordinance. The employers alleged the ordinance conflicts with section 67.1671, RSMo, as well as sections 71.010 and 290.502, RSMo, and constitutes a violation of the city's charter authority. In its judgment, the circuit court found that section 67.1671 was invalidly

enacted but that sections 71.010 and 290.502 preempted the ordinance. Both the city and the employers appeal.

**AFFIRMED IN PART AND REVERSED IN PART.**

**Court en banc holds:** (1) Section 67.1571 cannot expressly preempt the ordinance because it was unconstitutionally enacted. The provision was included as an amendment to House Bill No. 1636, a bill governing the establishment, proper governance and operation of community improvements districts. The state constitution, however, prohibits the legislature from passing a bill that contains more than one subject. HB 1636 contains more than one subject because its minimum wage provision does not fairly relate to its original purpose. The minimum wage provision is invalid, but it can be severed from the provisions that support HB 1636's controlling purpose. The city is not time-barred from making this constitutional argument under a statute of limitations, which limits the time for bringing an action but does not limit cases in which it is raised as an affirmative defense. Additionally, prior litigation addressing a minimum wage issue does not bar the city from raising the preemption issue because that prior case was not reviewed on the merits, so there was no full and fair opportunity to litigate the issue.

(2) The ordinance does not conflict with Missouri's minimum wage law, section 290.502. Section 290.502, considered alone or in conjunction with section 71.010, does not conflict with the local law, nor does it "occupy the field" of minimum wage laws. Section 290.502 simply prohibits employers from paying employees a wage lower than the state minimum, and nothing in the statute prevents local governments from adopting locally higher minimum wages. Local laws such as the city's ordinance are within a municipality's police powers, and the city did not improperly stray beyond its charter authority in enacting the ordinance.

**Opinion concurring in result by Judge Fischer:** The author agrees with the result reached in the principal opinion but does not join in the principal opinion's preemption analysis, which he believes is not necessary to the resolution of the case. HB 722 provides that local minimum wage ordinances in effect on August 28, 2015, shall not be preempted. This includes the city's ordinance. Further, the city acted within its home-rule authority in enacting the ordinance. This should end the inquiry.